

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Whipple et al.
Title: SYSTEM AND METHOD FOR CREATING FINANCIAL ASSETS
Appl. No.: 10/747,740
Filing Date: 12/29/2003
Examiner: CHANG, EDWARD
Art Unit: 3691
Confirmation Number: 2062

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. §1.705

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request reconsideration of the Patent Term Adjustment (PTA) determined for the captioned patent.

The Patent Office determined that the patent was entitled to 981 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that

"[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1244 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 1,306 days

(b) Total Applicant delay: 62 days

Final PTA Determination: 1,244 days

Applicants therefore respectfully request that the patent be accorded 1,244 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date February 3, 2010

By /Brett P. Belden/

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Patent Term Adjustment Calculation System

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Docket Number: 037607-0257

Application Number: 10/747740

Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	12/29/2003	0		
	14 month From Application date	02/28/2005	427		
	3 Year Period Starts	12/29/2006	1,096		
Edit Delete	Non-Final Office Action	01/07/2008	1,470	(1043)	
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/07/2008	1,561		
Edit Delete	Final Office Action	05/28/2008	1,612		
Edit Delete	Final Office Action Response Received at PTO	08/28/2008	1,704		
	Final Office Action + 3 months	08/28/2008	1,704		
Edit Delete	Advisory Action	09/15/2008	1,722		
Edit Delete	Request For Continued Examination (no amendment)	09/26/2008	1,733	(637) 1306	29
Edit Delete	Non-Final Office Action	11/20/2008	1,788		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	02/20/2009	1,880		
Edit Delete	Non-Final Office Action	05/26/2009	1,975		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/26/2009	2,067		
Edit Delete	IDS under 1.704(c)(8) filed at PTO	09/28/2009	2,100		33
Edit Delete	Notice of Allowance	12/11/2009	2,174		
	Projected Patent Grant Date	06/22/2010	2,367		
			Totals:	1,306	62
			PTA:	1,244	

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IP: 16.50.33.87

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